

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

DAVID SIDOO, *et al.*,

Defendants.

Crim. No. 19-cr-10080-NMG-MPK

**JOINT INTERIM STATUS REPORT**

Pursuant to Local Rule 116.5(b), the parties hereby file the following status report prepared in connection with the Interim Status Conference that is currently scheduled for October 2, 2019.

**(1) Automatic Discovery & Pending Discovery Requests**

The Government mailed automatic discovery in this case to Defendant Sidoo on or about April 25, 2019, the Colburn Defendants on or about April 30, 2019, and the remaining Defendants on or about May 17, 2019. The Government produced supplemental discovery to all Defendants on or about May 29, 2019, July 1, 2019, and August 30, 2019. The discovery was provided on hard drives, DVDs, and thumb drives. The Government provided Defendants with indices where required and some, but not all discovery has been produced as databases in load-ready forms. Defendants are currently reviewing this discovery.

The Government has received discovery requests from Defendants Abdelaziz and McGlashan. The Government believes it has addressed Defendants Abdelaziz and McGlashan's requests. Defendants Abdelaziz and McGlashan do not believe the Government has properly addressed their requests, although Defendant McGlashan is still in continuing communications with the Government. The parties continue to agree to hold in abeyance the deadlines associated with discovery motions, including with respect to Defendants Abdelaziz and McGlashan's

requests, so that discovery motions can be consolidated to the extent practical. There are no other pending discovery requests.

Defendants anticipate sending the Government rolling discovery requests as issues are identified during Defendants' ongoing review of the material provided to date. Defendants anticipate requesting additional documents required to be produced under Fed. R. Crim. P. 16, Local Rules 116.1 and 116.2 and a table of contents that complies with the requirements of Local Rule 116.10.

Defendants have not yet produced any discovery to the Government despite Government requests because the Defendants believe that it is premature to do so at this time. The Government disagrees with the Defendants' assertion that it is "premature" to provide their own discovery pursuant to Rule 16(b) and Local Rule 116.1(d). Those rules clearly state Defendants must provide reciprocal Rule 16 discovery to the Government within 28 days of arraignment. The Government has complied with its discovery obligations and continues to comply with them. The Defendants have now had approximately 5 months to review the Government's discovery, confer with their clients, and strategize regarding potential defenses. It is not premature to provide discovery, which they can later supplement, to the Government as required by the rules.

**(2) Additional Discovery**

The Government anticipates providing additional discovery as it comes in and is processed by the Government pursuant to Local Rule 116.7. The Government has indicated that it has reviewed all material in its possession and that "the Government is aware of no information or materials relating to this case of the types described in 116.2(b)(1)" – *i.e.*, there is no material required to be produced now pursuant to *Brady v. Maryland*. However, the Government is still reviewing discovery as it is produced to determine whether any such discovery, with respect to the

charged Defendants, is information that would tend directly to negate the Defendants' guilt concerning any count in the indictment, and will produce said discovery. Defendants expect to continue to confer and exchange letters with the Government regarding materials the Government is obligated to produce pursuant to Local Rules 116.1(c)(1)(A)-(F) and 116.2(b)(1)(A)-(F) and with a particular focus on the subject of core *Brady* material, required to be produced now under Rule 16 and the Local Rules. If no agreement can be reached, Defendants will file a motion to compel production of such material and, if necessary, request *in camera* inspection. Further, the Government is aware of its obligations and will produce discovery—including *Brady* material—as it is reviewed and processed by counsel.

Defendants anticipate providing discovery to the Government when they have determined what evidence, if any, to introduce in their cases-in-chief, as required by Rule 16(b)(1)(A)(ii).

**(3) Timing of Additional Discovery Requests**

The parties previously agreed to hold in abeyance the deadlines associated with the discovery motion and bill of particulars provisions of Local Rule 116.3 until the forthcoming status conference, given the large volume of discovery produced by the Government. In the interim, Defendants Abdelaziz and McGlashan have made letter requests to the Government for additional discovery. Although Defendants remain free to request additional discovery from the Government as part of the meet and confer process, Defendants propose, given Defendants' ongoing review of the voluminous materials produced to date and the need to review additional materials yet to be produced by the Government, that the Court not set deadlines for discovery requests or bills of particulars at this time.

The Government, in contrast, proposes the following briefing schedule for discovery motions, while recognizing that additional discovery issues may arise after these dates as

Defendants continue to review and determine what is included (or not included) in the material already provided:

- Motions and opening memoranda November 12, 2019
- Opposition memoranda December 20, 2019
- Reply briefs January 10, 2019

**(4) Protective Orders**

There is a protective order currently in place. Should a party seek modification of any existing protective order, a motion will be filed with the Court to address any issue.

**(5) Pretrial Motions under Fed. R. Crim. P. 12(b)**

The parties previously requested that the Court set a schedule for Defendants to file pretrial motions under Fed. R. Crim. P. 12(b) after Defendants had an opportunity to review all discovery provided by the Government. Defendants renew that request. The Government, in contrast, requests that the Court order that the Rule 12(b) motions be filed concurrently with discovery motion schedule proposed above or at some other date as ordered by the Court.

With respect to the motion to dismiss filed by Defendants Amy and Gregory Colburn (Dkt. 341), all parties previously agreed and requested that resolution of that motion be stayed until the other Defendants had an opportunity to review the discovery materials from the Government to determine whether to join the motion filed by the Colburn Defendants or to file their own separate or consolidated motions. Defendants also renew this request. The Government, in contrast, requests that the Colburn Defendants' motion be treated as having been filed on November 12, 2019, consistent with the proposed briefing schedule, and any Defendant seeking to join that motion do so by November 12, 2019.

**(6) Expert Discovery**

The Government agrees to provide any expert witness disclosures 90 days prior to trial. Defendants agree to provide any expert witness disclosures 30 days prior to trial.

Defendants also request that the Government agree to disclose, 6 months before trial, the names and general subject-matters of its experts. Further, Defendants believe that the final expert disclosures should be similar in scope to those required in civil actions. The Government opposes this request, believing that there is no need to deviate from the standard time frames here with respect to expert discovery.

**(7) Defenses of Insanity, Public Authority, or Alibi**

No Defendant presently intends to offer defenses of insanity, public authority, or alibi.

**(8) Speedy Trial Act**

The 70-day period specified in 18 U.S.C. § 3161(c)(1) commenced on March 15, 2019 as to Defendant Sidoo, April 3, 2019 as to the Colburn Defendants, and April 9, 2019 as to the remaining Defendants. In Orders entered March 18, 2019, April 3, 2019, April 9, 2019, April 29, 2019, and June 3, 2019, the Court has excluded all time between March 15, 2019 and October 2, 2019 under the Speedy Trial Act. *See* Dkts. 25, 124, 129, 370, & 394.

The parties have conferred and ask that the Court exclude the period of time from the time of the interim status conference on October 2, 2019 to the time of the next status conference, under 18 U.S.C. § 3161(h)(7)(A), to permit Defendants time to review discovery and confer with their respective counsel. The ends of justice served by this exclusion outweigh the interests of the public and each Defendant in a speedy trial.

**(9) Status of Plea Discussions and Likelihood and Estimated Length of Trial**

The parties will be prepared to discuss additional relevant matters with the Court at the conference on October 2. Depending on the number of Defendants remaining for trial and absent severances, the Government currently estimates that its case-in-chief would take approximately three to six weeks, assuming half-day sessions.

**(10) Interim Status Conference**

The parties request an interim status conference the week of January 13, 2020, or at such time as is convenient to the Court.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, Kristen A. Kearney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 25, 2019.

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